

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Mercedes Bayon	Team: Team # 5	CCRB Case #: 201016595	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Tuesday, 11/30/2010 1:45 AM	Location of Incident: 3722 White Plains Road	Precinct: 47	18 Mo. SOL 5/30/2012	EO SOL 5/30/2012	
Date/Time CV Reported Tue, 11/30/2010 1:51 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Fri, 12/03/2010 3:06 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Bennett Shelley	18552	947489	047 PCT
2. An officer			047 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Tyrone Hogue	24863	947773	047 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Bennett Shelley	Abuse: PO Bennett Shelley stopped § 87(2)(b)	
B.POM Bennett Shelley	Abuse: PO Bennett Shelley searched § 87(2)(b)	
C. An officer	Abuse: An officer threatened § 87(2)(b) with the use of force.	

Case Summary

On November 30, 2010, § 87(2)(b) filed this complaint with the Internal Affairs Bureau via the telephone. The CCRB received this complaint on December 3, 2010 via IAB log number 10-59545.

On November 30, 2010 at approximately 1:45am, § 87(2)(b) was in the vicinity of 3722 White Plains Road, in the Bronx, when he was stopped by PO Bennett Shelley. The following allegations resulted:

- **Allegation A: Abuse of Authority-** PO Bennett Shelley stopped § 87(2)(b)
- **Allegation B: Abuse of Authority-** PO Bennett Shelley searched § 87(2)(b)
§ 87(2)(g)
- **Allegation C: Abuse of Authority-** An officer threatened § 87(2)(b) with the use of force.

§ 87(2)(g)

Results of Investigation

Civilian Statement(s)

Complainant: § 87(2)(b)

- § 87(2)(b) § 87(2)(b) -old at the time of the incident, is a black male who stands 5'8" tall and weighs 136 pounds with black hair and brown eyes. § 87(2)(b)

IAB Intake Recording: (encl. 2a-b)

On November 30, 2010, § 87(2)(b) was connected by a 911 Operator to the IAB command center.

§ 87(2)(b) stated that he was speaking with an unidentified friend when four officers in a van stopped, exited the van and approached § 87(2)(b) and his friend. § 87(2)(b) identified one of the officers as PO Shelley with shield number 18552. The officers approached them, directed § 87(2)(b) to the wall and began searching § 87(2)(b). § 87(2)(b) stated that three of the officers were "OK," but one of the officers, who he described as a white or Hispanic male, 5'11"-6'0", black hair with a deep voice, was cursing at him and threatened to take him around the corner and "knock his fucking teeth out." § 87(2)(b) stated that he was not injured and did not need medical attention.

CCRB Statement:

On December 14, 2010 § 87(2)(b) provided a brief telephone statement (encl. 4a) and on January 20, 2011, § 87(2)(b) was interviewed in person at the CCRB (encl. 5a-f).

On November 30, 2010, at approximately 12:33am, § 87(2)(b) walked outside of his apartment building located at § 87(2)(b) in the Bronx. § 87(2)(b) was wearing a light blue hooded sweater, dark grey boots, blue jeans, a black jacket as well as a beige colored scarf around his head covering his ears and a dark grey hat over the scarf on his head. § 87(2)(b) walked to the corner of White Plains Road and encountered his friend at the corner of East 217th Street and White Plains Road. § 87(2)(b)'s friend was standing by himself. Since the date of incident, § 87(2)(b) spoke with his friend who informed § 87(2)(b) that he did not wish to participate with this complaint and did not want § 87(2)(b) to disclose his identity. § 87(2)(b) did not know where his friend came from before he stood on the corner and did not know if his friend had stood at the corner speaking with anyone prior to his own arrival. § 87(2)(b) observed several marked police vehicles drive up and down White Plains Road and East 217th Street. One marked police van specifically drove past § 87(2)(b) and his friend several times making U-turns and going up and down White Plains Road between East 217th Street and East 219th Street.

§ 87(2)(b) explained that, at approximately 1:45am, after approximately 40 or more minutes of him standing on the corner speaking with his friend, the marked police van pulled up on the corner of East 217th Street and White Plains Road. Four uniformed police officers got out of the van. One of the officers who he identified as, "PO Shelley," and described as a white male about 5'8"-5'9" tall, 160 pounds and clean shaven between 20-30 years old, directed § 87(2)(b) to "move towards the wall." § 87(2)(b) told PO Shelley that he has a lot of injuries from several surgeries and they would not want to touch him because he could easily be injured. § 87(2)(b) described that there was a store behind him with the gate down, which is where he began to walk to get against the wall. § 87(2)(b)'s friend stood there for a while, but none of the officers interacted with him. As § 87(2)(b) stood against the gate, PO Shelley, another officer who he described as a white male about 5'8"-5'9" tall and a second officer who he described as a white male, possibly Hispanic with darker skin tone than the other officers approached him. The fourth officer did not engage and remained away from him near the police van. PO Shelley began searching § 87(2)(b) by going into his pockets. § 87(2)(b) obtained PO Shelley's name by reading it off of his uniform.

When PO Shelley began searching § 87(2)(b) § 87(2)(b) told him, "What are you doing? Why are you going into my pockets? Are you about to violate my civil rights because I really don't want another lawsuit?" § 87(2)(b) explained that he was referring to a lawsuit, which he filed against the NYPD several years ago. PO Shelley continued to go through his pants pockets and coat pockets while § 87(2)(b) continued to protest. At some point PO Shelley then took out § 87(2)(b)'s prescription bottle from his front left pants pocket, which was in a plastic bag and he described he had paper wrapped around the label of the bottle to protect the label. PO Shelley began pulling at the label at which time § 87(2)(b) reached towards the bottle to show PO Shelley how to remove the paper and PO Shelley told him to get his hands away from his face, which § 87(2)(b) stated that his hands were not near his face and he was going to show him how to remove the paper.

PO Shelley then put the bottle back into § 87(2)(b)'s pocket and he continued going through all of § 87(2)(b)'s pockets. PO Shelley then asked § 87(2)(b) for his name, which § 87(2)(b) acknowledged that he said, "I don't know." After § 87(2)(b) replied, "I don't know," one of the officers stated, "I'll take you around the corner and knock your mother fucking teeth out!" § 87(2)(b) was not sure which officer made this comment because he was only focused on PO Shelley and not paying attention to the other officers. The other officers were standing together about 2-3 feet away from § 87(2)(b) and PO Shelley. One of the officers then told PO Shelley he should

check the prescription for § 87(2)(b)'s name and address at which time PO Shelly removed the prescription bottle from § 87(2)(b)'s pocket a second time. PO Shelley then looked at § 87(2)(b)'s prescription bottle and obtained his name and address.

PO Shelley showed § 87(2)(b) showing him a photo of § 87(2)(b) in a wanted flyer who was wanted for a home invasion that occurred a few houses down from where he lived. § 87(2)(b) acknowledged that the individual in the photo resembled him, but he did not know the individual. He described the male in the photo as a black male wearing a hooded sweater. § 87(2)(b) was never given a stop, question and frisk card stating the reason why he was stopped. All of the officers then walked away, got into their van and drove away.

Attempts to Contact Civilians

At the time of § 87(2)(b)'s CCRB interview, he informed the undersigned investigator that his friend did not wish to participate with this complaint and did not want § 87(2)(b) to disclose his identity. As such the CCRB was unable to obtain a witness statement from this individual.

NYPD Statement(s):

Subject Officer: BENNETT SHELLEY

- *PO Shelley, § 87(2)(b) - old, at the time of the incident, is a white male who stands 5'7" tall and weighs 168 pounds with black hair and hazel eyes.*
- *PO Shelley worked with PO Tyrone Hogue assigned to impact in uniform and in a marked police vehicle. PO Shelly worked from 5:30pm on November 29, 2010 until 2:05am on November 30, 2010.*

Memo Book: (encl. 6a)

PO Shelly did not have any memo book entries regarding this incident.

CCRB Statement: (encl. 7a-b)

On April 11, 2011, PO Bennett Shelly was interviewed at the CCRB.

PO Shelley did not have any recollection of this incident. PO Shelley was shown a photograph of § 87(2)(b) from which he stated that § 87(2)(b) looked familiar, but he did not recall any interaction with § 87(2)(b) specifically on the date of incident. PO Shelley did not recall stopping or searching any individuals, specifically § 87(2)(b) regarding any home invasions, burglaries or robberies in the vicinity of White Plains Road and East 217th Street. PO Shelley stated that during the time of the incident there had been a high occurrence of burglaries in the area. He explained that there are several bodegas along White Plains Road, which were burglarized and stated that during the burglaries one or two individuals would stand outside of the bodega and serve as look-out for any police. PO Shelley did not recall the physical description of any wanted person regarding the burglaries and stated that if there is a photo of a wanted person, any person(s) stopped with regard to the burglary would be shown the photograph and informed of why they were stopped; however, he did not recall such an incident on the date in question. PO Shelley was given a brief summary of the incident, which did not refresh his memory. PO Shelly and PO Hogue were the only officers in the van working together.

Witness Officer: TYRONE HOGUE

- *PO Hogue, § 87(2)(b) -old at the time of the incident, is a Hispanic male who stands 5'11" tall and weighs 210 pounds with brown hair and brown eyes.*
- *PO Hogue worked with PO Shelley assigned to Impact Patrol in a marked vehicle in uniform.*

PO Hogue worked from 6:00pm on November 29, 2010 until 2:05am on November 30, 2010.

Memo Book: (encl. 8a-b)

PO Hogue did not have any memo book entries regarding this incident.

CCRB Statement: (encl. 9a-b)

On May 12, 2011, PO Tyrone Hogue was interviewed at the CCRB.

PO Hogue did not have any recollection of this incident. PO Hogue stated that at 1:00am he was given permission of leave in which he ended his tour at 1:00am. PO Hogue was provided with a brief summary of the incident, which did not assist in his recollection of this incident.

Additionally, he was shown a photograph of § 87(2)(b) from which he stated that he did not recognize § 87(2)(b). PO Hogue stated that while East 217th Street and White Plains Road is an area in which he would patrol during his tour, he did not recall any specific incident in the area and did not recall stopping or searching any black males regarding any home invasions, burglaries or robberies. PO Hogue did not know who PO Shelley was partnered with after he ended his tour early and stated that he and PO Shelley were the only officers inside of their van.

NYPD Document(s)

NYPD SPRINT

There was no NYPD SPRINT regarding this incident

Stop and Frisk Report

There was no stop and frisk report prepared regarding this incident

Roll Call for Tour 3 on November 29, 2010 (encl. 10a-b)

PO Shelley and PO Hogue were on duty at the time of the incident assigned to Impact. There were seventeen officers assigned to Impact at the time of the incident.

Status of Civil Proceedings (encl. 11a)

- § 87(2)(b) filed a Notice of Claim with the City of New York on § 87(2)(b). A 50H hearing has not been held and one has not been scheduled. The items of damage and/or injuries are not available because they are currently under investigation by the City of New York.

Civilian(s) Criminal History

- § 87(2)(b) § 87(2)(c)

Civilian(s) CCRB History (encl. 1b)

- This is the first CCRB complaint filed by § 87(2)(b)

Subject Officer(s) CCRB History (encl. 1a)

- PO Bennett Shelly has been a member of the service for three years and has the following substantiated CCRB allegations against him:
 - In CCRB case number 201002667 a frisk allegation was substantiated against PO Shelley. The CCRB recommended charges. There is no NYPD disposition available for this allegation.

Conclusion

Identification of Subject Officer(s)

§ 87(2)(b) identified PO Shelley by name during his CCRB interview and alleged that PO Shelley stopped and search him. § 87(2)(g)

§ 87(2)(b) further alleged that an officer threatened him with the use of force; however, § 87(2)(b) described that several officers were around and he was unsure who made the comment. Additionally, while PO Shelley had no recollection of this incident, he denied making the comment or hearing another officer making the comment. § 87(2)(g)

Investigative Findings and Recommendations

Allegation A: Abuse of Authority- PO Bennett Shelley stopped § 87(2)(b)

Allegation B: Abuse of Authority- PO Bennett Shelley searched § 87(2)(b)

§ 87(2)(b) alleged that PO Shelley directed him to get against the wall and then began searching through his coat pockets and pants pockets. PO Shelley removed a prescription bottle from § 87(2)(b)'s pants pocket from which he obtained § 87(2)(b)'s name and address from the prescription label. At the conclusion of this interaction, PO Shelley informed § 87(2)(b) that he had a similar physical appearance to a suspect they were looking for regarding a string of robberies occurring in the area. PO Shelley showed § 87(2)(b) a photograph of the wanted individual and § 87(2)(b) acknowledged that the individual's physical appearance was similar to his. However, PO Shelley and PO Hogue did not have any recollection of this incident and there was no NYPD documentation regarding this incident. § 87(2)(g)

Allegation C: Abuse of Authority- An officer threatened § 87(2)(b) with the use of force.

According to § 87(2)(b) PO Shelly requested his name to which § 87(2)(b) responded "I don't know." § 87(2)(b) alleged that subsequent to his reply one of the officers stated, "I'll take you around the corner and knock your mother fucking teeth out!" § 87(2)(b) was not able to provide a sufficient description of the other officers who were present because they were standing a few feet away and his attention was focused on PO Shelley. § 87(2)(b) explained that he was unsure which officer made the statement. Additionally, neither PO Shelley nor PO Hogue recollected the incident. According to PO Hogue, he had ended his tour prior to the occurrence of this incident.

§ 87(2)(g)

Team: 5

Investigator: _____
Signature Mercedes Bayon Print Date

Supervisor: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date